IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 319 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAFAJI LADHAJI BAROT & 2 - Applicant(s)
Versus
DHANAJI MASARARJI BAROT & 1 - Opponent(s)

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Appearance :
MR BG PATEL for Applicant(s) : 1 - 3.
MR CL SONI for Opponent(s) : 1,
None for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 21/04/2006

ORAL JUDGMENT

The petitioners approached this Court being aggrieved of an order/ direction issued by the Mamlatdar, Tharad, in Mamlatdar Court Act Case No.2 of 2004 dated 24th April 2005, whereby the Mamlatdar was pleased to order that encroachment made in Survey No.86/A/1, which

is a gaucher land be immediately removed and the 'way' be made open. Against this order the present petitioners had approached the Collector by filing Mamlatdar Court Act Revision Case No.4 of 2005 which was decided by the Deputy Collector, Tharad on 30th August 2005. The Deputy Collector was pleased to reject the Revision Application filed by the present petitioners and confirmed the order passed by the Mamlatdar on 24th April 2005. The matter was heard at length. Orders were passed from time to time and the authorities were directed to act in accordance with law including that of taking necessary action against the defaulters-encroachers in the gaucher land.

Mr.Patel, the learned advocate for the petitioners states that according to the petitioners as land on which the alleged encroachment was made by the petitioners was not agricultural land, the Mamlatdar Court had no jurisdiction to entertain the application of the respondents, but then he submits that now the authorities have got the encroachment removed, the petitioners have instructed him not to press the matter any further. However, he submitted that an indulgence may be granted to the petitioners by making suitable observation that in case the petitioners apply for allotment of land for

construction of residential premises, the said application should be considered by the authorities in accordance with law. He further submitted that it may also be observed that the authorities shall not get prejudiced by the present proceedings, particularly, by the fact of encroachment and its removal in the present proceedings.

2. The request made by the learned advocate, Mr.Patel cannot be entertained by this Court for the simple reason that presumption under law is that whenever a citizen approaches an authority, the authority is bound under law to act in accordance with law and therefore, to make an observation to the effect that in the event the petitioners approach the authority, the authority shall act in accordance with law, is for the mental satisfaction of the petitioners, and therefore, the Court restrains itself from making such observations.

However, the second limb of the request that in the event of the petitioner making an application for allotment of land for putting residential premises, then such application shall be considered by the authorities in accordance with law, without being prejudiced by the

present proceedings, is acceptable. The authorities are directed to decide the application, made if any, for grant of plot for putting up residential premises, application shall be considered by the authorities in accordance with law, without being prejudiced by the fact of the present litigation. This Civil Revision application is accordingly disposed of.

(RAVI R. TRIPATHI, J.)

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